

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Special Session
2003

CHAPTER 7

HOUSE BILL 2025

AN ACT

AMENDING SECTIONS 14-10111, 14-10505, 14-10602 AND 14-10814, ARIZONA REVISED STATUTES; AMENDING LAWS 2003, CHAPTER 212, SECTIONS 15 AND 16; RELATING TO THE REVISED UNIFORM TRUST CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-10111, Arizona Revised Statutes, is amended to
3 read:

4 14-10111. Nonjudicial settlement agreements; definition

5 A. Except as otherwise provided in subsection B, interested persons
6 may enter into a binding nonjudicial settlement agreement with respect to any
7 matter involving a trust.

8 B. A nonjudicial settlement agreement is valid only to the extent it
9 does not violate a material purpose of the trust and includes terms and
10 conditions that could be properly approved by the court under this chapter
11 or other applicable law.

12 C. Matters that may be resolved by a nonjudicial settlement agreement
13 include:

14 1. The interpretation or construction of the terms of the trust.

15 2. The approval of a trustee's report or accounting.

16 3. Direction to a trustee to refrain from performing a particular act
17 or the grant to a trustee of any necessary or desirable power.

18 4. The resignation or appointment of a trustee and the determination
19 of a trustee's compensation.

20 5. The transfer of a trust's principal place of administration.

21 6. The liability of a trustee for an action relating to the trust.

22 D. Any interested person may request the court to approve a
23 nonjudicial settlement agreement to determine whether the representation as
24 provided in article 3 of this chapter was adequate and to determine whether
25 the agreement contains terms and conditions the court could have properly
26 approved.

27 E. This section applies only to any trust that becomes irrevocable on
28 or after January 1, ~~2004~~ 2006.

29 F. For the purposes of this section, "interested persons" has the same
30 meaning prescribed in section 14-1201.

31 Sec. 2. Section 14-10505, Arizona Revised Statutes, is amended to
32 read:

33 14-10505. Creditor's claim against settlor

34 A. Whether or not the terms of a trust contain a spendthrift
35 provision, the following rules apply:

36 1. During the lifetime of the settlor, the property of a revocable
37 trust is subject to claims of the settlor's creditors.

38 2. With respect to an irrevocable trust, a creditor or assignee of
39 the settlor may reach the maximum amount that can be distributed to or for
40 the settlor's benefit. If a trust has more than one settlor, the amount the
41 creditor or assignee of a particular settlor may reach may not exceed the
42 settlor's interest in the portion of the trust attributable to that settlor's
43 contribution.

1 3. After the death of a settlor, and subject to the settlor's right
2 to direct the source from which liabilities will be paid, the property of a
3 trust that was revocable at the settlor's death is subject to claims of the
4 settlor's creditors, costs of administration of the settlor's estate, the
5 expenses of the settlor's funeral and disposal of remains and statutory
6 allowances to a surviving spouse and children to the extent the settlor's
7 probate estate is inadequate to satisfy those claims, costs, expenses and
8 allowances.

9 B. For the purposes of this section:

10 1. During the period the power may be exercised, the holder of a power
11 of withdrawal is treated in the same manner as the settlor of a revocable
12 trust to the extent of the property subject to the power.

13 2. On the lapse, release or waiver of the power, the holder is treated
14 as the settlor of the trust only to the extent the value of the property
15 affected by the lapse, release or waiver exceeds the greater of the amount
16 specified in section 2041(b)(2) or 2514(e) of the internal revenue code of
17 1986, or section 2503(b) of the internal revenue code of 1986, in each case
18 as in effect on January 1, 2004 2006, or as later amended.

19 C. For the purposes of this section, a trust settled or established
20 by a corporation, professional corporation, partnership, governmental entity,
21 trust, foundation or other entity is not deemed to be settled or established
22 by its directors, officers, shareholders, partners, employees, beneficiaries
23 or agents.

24 D. For the purposes of this section, amounts contributed to a trust
25 by a corporation, professional corporation, partnership, governmental entity,
26 trust, foundation or other entity are not deemed to have been contributed by
27 its directors, officers, shareholders, partners, employees, beneficiaries or
28 agents. Powers, duties or responsibilities granted to or reserved by the
29 settlor pursuant to the trust and any actions or omissions taken pursuant to
30 the trust are deemed to be the powers, responsibilities, duties, actions or
31 omissions of the settlor and not those of its directors, officers,
32 shareholders, partners, employees, beneficiaries or agents.

33 E. Subsections C and D do not apply to:

34 1. A trust that has no valid business purpose and that has as its
35 principal purpose the evasion of the claims of the creditors of the persons
36 or entities listed in those subsections.

37 2. A trust that would be treated as a grantor trust pursuant to
38 sections 671 through 679 of the internal revenue code of 1986 as in effect
39 on January 1, 2004 2006, or as later amended. This paragraph does not apply
40 to a qualified subchapter S trust that is treated as a grantor trust solely
41 by application of section 1361(d) of the internal revenue code of 1986 as in
42 effect on January 1, 2004 2006, or as later amended.

1 Sec. 3. Section 14-10602, Arizona Revised Statutes, is amended to
2 read:

3 14-10602. Presumption of revocability; revocation or amendment
4 of revocable trust

5 A. Unless the terms of a trust expressly provide that the trust is
6 irrevocable, the settlor may revoke or amend the trust. This subsection does
7 not apply to a trust created under an instrument executed before January 1,
8 2004 2006. This subsection applies only to any trust that becomes
9 irrevocable on or after January 1, 2004 2006.

10 B. If a revocable trust is created or funded by more than one settlor:

11 1. To the extent the trust consists of community property, the trust
12 may be revoked by either spouse acting alone but may be amended only by joint
13 action of both spouses.

14 2. To the extent the trust consists of property other than community
15 property, each settlor may revoke or amend the trust with regard TO the
16 portion of the trust property attributable to that settlor's contribution.

17 C. The settlor may revoke or amend a revocable trust either:

18 1. By substantial compliance with a method provided in the terms of
19 the trust.

20 2. If the terms of the trust do not provide a method or the method
21 provided in the terms is not expressly made exclusive, by either:

22 (a) A later will or codicil that expressly refers to the trust or
23 specifically devises property that would otherwise have passed according to
24 the terms of the trust.

25 (b) Any other method manifesting clear and convincing evidence of the
26 settlor's intent.

27 D. On revocation of a revocable trust, the trustee shall deliver the
28 trust property as the settlor directs.

29 E. A settlor's powers with respect to revocation, amendment or
30 distribution of trust property may be exercised by an agent under a power of
31 attorney only to the extent expressly authorized by the terms of the trust
32 or, if the terms of the trust do not prohibit an agent from exercising powers
33 on behalf of the settlor, to the extent expressly authorized under the power
34 of attorney. If an agent is not so authorized and the terms of the trust do
35 not prohibit a conservator from exercising powers on behalf of a settlor, a
36 settlor's power to revoke, amend or distribute may be exercised by the
37 settlor's conservator with the approval of the court supervising the
38 conservatorship or by the settlor's guardian with the approval of the court
39 supervising the guardianship if an agent is not so authorized and a
40 conservator has not been appointed.

41 F. A trustee who does not know that a trust has been revoked or
42 amended is not liable to the settlor or settlor's successors in interest for
43 distributions made and other actions taken on the assumption that the trust
44 had not been amended or revoked.

1 Sec. 4. Section 14-10814, Arizona Revised Statutes, is amended to
2 read:

3 14-10814. Discretionary powers; tax savings

4 A. Notwithstanding the breadth of discretion granted to a trustee in
5 the terms of the trust, including the use of terms such as absolute, sole or
6 uncontrolled, the trustee shall exercise a discretionary power in good faith
7 and in accordance with the terms and purposes of the trust and the interests
8 of the beneficiaries.

9 B. Subject to subsection D, and unless the terms of the trust
10 expressly indicate that a rule in this subsection does not apply:

11 1. A person other than a settlor who is a beneficiary and trustee of
12 a trust that confers on the trustee a power to make discretionary
13 distributions to or for the trustee's personal benefit may exercise the power
14 only in accordance with an ascertainable standard relating to the trustee's
15 individual health, education, support or maintenance within the meaning of
16 section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code of 1986, as
17 in effect on January 1, 2004 2006, or as later amended.

18 2. A trustee may not exercise a power to make discretionary
19 distributions to satisfy a legal obligation of support that the trustee
20 personally owes another person.

21 C. A power whose exercise is limited or prohibited by subsection B may
22 be exercised by a majority of the remaining trustees whose exercise of the
23 power is not so limited or prohibited. If the power of all trustees is so
24 limited or prohibited, the court may appoint a special fiduciary with
25 authority to exercise the power.

26 D. Subsection B does not apply to:

27 1. A power held by the settlor's spouse who is the trustee of a trust
28 for which a marital deduction, as defined in section 2056(b)(5) or 2523(e)
29 of the internal revenue code of 1986, as in effect on January 1, 2004 2006,
30 or as later amended, was previously allowed.

31 2. Any trust during any period that the trust may be revoked or
32 amended by its settlor.

33 3. A trust if contributions to the trust qualify for the annual
34 exclusion under section 2503(c) of the internal revenue code of 1986, as in
35 effect on January 1, 2004 2006, or as later amended.

36 Sec. 5. Laws 2003, chapter 212, section 15 is amended to read:

37 Sec. 15. Application to existing relationships

38 A. Except as otherwise provided in this act, beginning on January 1,
39 2004 2006:

40 1. This act applies to all trusts created before, on or after January
41 1, 2004 2006.

42 2. This act applies to all judicial proceedings concerning trusts
43 commenced on or after January 1, 2004 2006.

1 3. This act applies to judicial proceedings concerning trusts
2 commenced before January 1, 2004 2006 unless the court finds that application
3 of a particular provision of this act would substantially interfere with the
4 effective conduct of the judicial proceedings or prejudice the rights of the
5 parties, in which case the particular provision of this act does not apply
6 and the superseded law applies.

7 4. Any rule of construction or presumption provided in this act
8 applies to trust instruments executed before January 1, 2004 2006, unless
9 there is a clear indication of a contrary intent in the terms of the trust.

10 5. An act done before January 1, 2004, 2006 is not affected by this
11 act.

12 B. If a right is acquired, extinguished or barred on the expiration
13 of a prescribed period that has commenced to run under any other statute
14 before January 1, 2004 2006, that statute continues to apply to the right
15 even if it has been repealed or superseded.

16 C. For all irrevocable trusts in existence before January 1, 2004
17 2006, if the notice required by section 14-10813, subsection B, paragraph 3,
18 Arizona Revised Statutes, has not previously been given, it shall be given
19 within sixty days after January 1, 2004 2006.

20 Sec. 6. Laws 2003, chapter 212, section 16 is amended to read:

21 Sec. 16. Delayed effective date

22 This act is effective from and after December 31, 2003 2005.

23 Sec. 7. Emergency

24 This act is an emergency measure that is necessary to preserve the
25 public peace, health or safety and is operative immediately as provided by
26 law.

APPROVED BY THE GOVERNOR DECEMBER 18, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE DECEMBER 18, 2003.

Second Special Session

Passed the House December 13, 2003

Passed the Senate December 13, 2003

by the following vote: 53 Ayes,

by the following vote: 25 Ayes,

0 Nays, 7 Not Voting

0 Nays, 5 Not Voting

Jake Flake
Speaker of the House

Kluflumet
President of the Senate

Norman L. Moore
Chief Clerk of the House

Chaimin Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA OFFICE OF GOVERNOR

This Bill was received by the Governor this

15 day of December, 2003

at 8:53 o'clock a. M.

Jennifer Upbarra
Secretary to the Governor

Approved this 18 day of

December, 2003,

at 9³⁰ o'clock A. M.

Jt. Ngalt
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18 day of December, 2003

at 11:08 o'clock A M.

Janice K. Brewer
Secretary of State

H.B. 2025